

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

XEZAKIA ROUSE,

Plaintiff,

v.

No. CIV 10-1094 JP/GBW

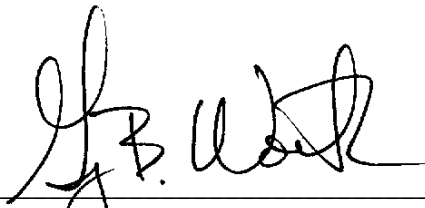
C.O. CRUZ,

Defendant.

ORDER

This matter is before the court on Plaintiff's motion for default judgment against Defendant (Doc. 27) filed on June 8, 2011. *See* Fed. R. Civ. P. 55. It appears from the record that no return of service has been filed as to the remaining Defendant. The Court may not properly enter default judgment unless service has been effected, waived, or accepted. *See, e.g., Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 941 (10th Cir. 1987); *Texas Western Financial Corp. v. Edwards*, 797 F.2d 902, 905 (10th Cir. 1986). "[A]n entry of default against [a defendant], before it had any obligation to file an answer, would have been incorrect as a matter of law." *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003). The motion will be denied.

IT IS THEREFORE ORDERED that Plaintiff's motion for default judgment (Doc. 27) filed on June 8, 2011, is DENIED.


UNITED STATES MAGISTRATE JUDGE